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Counsel for Debtor and Debtor-in-Possession,  
Law Offices of Brian D. Witzer, Inc.

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:

LAW OFFICES OF BRIAN D. WITZER,  
INC.,  
Debtor and Debtor-in-Possession.

CASE NO.: 2:21-bk-12517-NB

Chapter 11

**DEBTOR LAW OFFICES OF BRIAN  
D. WITZER'S REPLY TO CREDITOR  
PRAVATI CREDIT FUND III, LP'S  
OBJECTION TO BRIAN D.  
WITZER'S NOTICE OF INSIDER  
COMPENSATION**

Hearing Scheduled For:

Date: May 11, 2021

Time: 1:00 p.m.

Place: Via ZoomGov

Hearing will be held via ZoomGov.

Please refer to Hon. Bason's "Procedures for  
Telephonic and Video Appearances:

[https://www.cacb.uscourts.gov/judges/honorable-  
neil-w-bason](https://www.cacb.uscourts.gov/judges/honorable-neil-w-bason)

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. COMPENSATION TO BRIAN D. WITZER IS NOT A RETENTION BONUS**

11 U.S.C. Section 503(c)(1) and (c)(3) do not apply because the compensation request for Brian D. Witzer is not a retention bonus. It is a fair compensation for services rendered by Mr. Witzer to the Debtor. The cases cited by Pravati do not support Pravati's contention that Section 503(c) applies to Insider Compensation Request of Brian D. Witzer. They all involve facts where the Debtor established an incentive plans for its employees and/or insiders. Here, there is no incentive plan proposed by the Debtor but rather a request for the court to approve Mr. Witzer's compensation request within the ordinary course, which is supported by what Mr. Witzer had historically received as a compensation from the Debtor.

**Case Law Analysis**

In re Journal Register Co., 407 B.R. 520, 535 (Bankr. S.D.N.Y. 2009) is premised on facts that are distinguishable from the facts of Debtor's case. In *In re Journal Register Co.*, as part of the Plan confirmation, the Debtor established an Incentive Plan for the benefit of certain employees of the Reorganized Debtor. The Incentive Plan provided bonuses to the employees critical to the Debtor if these employees achieve certain goals after the plan confirmation the Debtors and the Consenting Lenders established in the plan support agreement. The court found that Section 503 of the Bankruptcy Code did not apply as the proposed payments are being paid subsequent to confirmation of the Plan and as a result of the confirmation order itself.

Here, Mr. Witzer's compensation request is not a bonus, as incorrectly characterized by Pravati, but rather a compensation for Mr. Witzer to continue to work hard and represent the best interests of the Firm and Firm's clients. No incentive plan is being proposed here and the Debtor is not at the plan confirmation stage. As such, Section 503 is not applicable.

1     In re Residential Capital, LLC, 478 B.R. 154, 170 (Bankr. S.D.N.Y. 2012), the  
2 Debtors sought authorization to implement two incentive plans covering eight insiders,  
3 and one retention plan covering 155 non-insider employees. These bonus plans provide  
4 for bonuses of approximately \$7.8 million to 163 employees, with nearly 50% being paid  
5 to the eight insiders. The United States Trustee opposed arguing that the Debtors failed to  
6 meet their burden to show that the bonus plans are primarily incentivizing rather than  
7 retentive. Under the plan, the insider participants were only required to remain with the  
8 Debtors until the closing of the platform sales, which were substantially negotiated pre-  
9 petition, in order to obtain their awards. The Debtors failed to show that these participants  
10 plan was a “pay for value” plan that offered incentives based on performance rather than  
11 a “pay to stay” plan. The court said that “when a plan is designed to motivate employees  
12 to achieve specified performance goals, it is primarily incentivizing, and thus not subject  
13 to section 503(c)(1).”  
14

15     Similarly, in In re Dana Corp., 351 B.R. 96, 102 (Bankr. S.D.N.Y. 2006), the debtors  
16 proposed a plan that provided for payment of awards upon “the effective date of a plan of  
17 reorganization” if the executives were still employed by the debtor, and for payment of  
18 additional awards based on the enterprise value of the debtors six months after the  
19 effective date of a plan 351 B.R. at 99. The court rejected the plan because it included  
20 “an amount payable to the [plan recipients] upon the [d]ebtors’ emergence from chapter  
21 11, regardless of the outcome of these cases. Without tying this portion of the bonus to  
22 anything other than staying with the company until the [effective date of a plan],” the  
23 court refused to find that the plan was primarily incentivizing. *Id.* at 102.

24     In In Mesa Air Group, No. 10 Civ. 10018 (MG), 2010 WL 3810899, \*4 (Bankr.  
25 S.D.N.Y. Sept. 24, 2010) (citation omitted), this Court held that the debtors’ incentive  
26 bonus program was not a retention bonus because it was designed to “motivate the  
27 employees to achieve performance goals.”  
28

1 Mr. Witzer's Insider Compensation requests the court to authorize payments to  
2 Mr. Witzer for the work he performs within the ordinary course of Debtor's business of  
3 operating a law practice. Mr. Witzer's request is a "pay for value." Debtor's caseload is  
4 based primarily on a contingency fee arrangement. If no recovery is received, the Debtor  
5 does not get compensated for the long hours of work spent on each case. If no  
6 compensation is received by the Debtor, there will be no funds to pay Mr. Witzer's  
7 compensation or to fund the reorganization plan. As the court in In re Residential Capital,  
8 pointed out, "when a plan is designed to motivate employees to achieve specified  
9 performance goals, it is primarily incentivizing, and thus not subject to section  
10 503(c)(1)."

11 Furthermore, Section 503(c)(3) which limits payments made to the Debtors'  
12 employees outside of the ordinary course unless such payments are justified by "the facts  
13 and circumstances of the case," is also not applicable because the compensation request  
14 of Mr. Witzer is within the ordinary course of Debtor's law practice. Mr. Witzer is the  
15 key player and the lead litigation counsel for all of the Debtor's cases. Without Mr.  
16 Witzer, these cases will not result in any recovery. Mr. Witzer's compensation request is  
17 a fair compensation for Mr. Witzer's use of his expertise, time and experience within the  
18 ordinary course of Debtor's business to achieve the best possible results for the clients. It  
19 is not a bonus compensation and no incentive plan is being proposed here. None of the  
20 cases cited by Pravati address the Insider Compensation for Debtor's principal. Instead,  
21 they deal with incentive and bonus plans proposed by Debtor's as part of their  
22 reorganization plans, which are not applicable to the facts of the Debtor's case.

23  
24 Pravati did not question Brian D. Witzer's compensation when it loaned millions of  
25 dollars to the Debtor. Now, Pravati argues that Mr. Witzer should not be receiving more  
26 than \$92,307.60 base annual salary. The services provided by Mr. Witzer are essential to  
27 the survival and successful reorganization of the Debtor. As noted above, Mr. Witzer is a  
28 civil litigation attorney with over thirty-five years of experience. He is the principal of the

Debtor and the lead counsel in all the cases he is handling. Without Mr. Witzer's contribution, the chances of prevailing at trial are substantially diminished. The Debtor's ability to pay its creditors, including Pravati, hinges on Debtor winning cases to generate the income to support the reorganization plan. Mr. Witzer handles complex civil litigation cases. If Mr. Witzer is not compensated for his hard work on behalf of his clients, he will not be motivated to work, and he will not be able to meet his own expenses. Without Mr. Witzer's hard work, expertise in the area of the law he practices in, and dedication to helping his clients by working long hours every week and going from one trial to another, there will be no income coming to the Debtor, and no chance for an effective reorganization. It is in the best interest of all the creditors that Mr. Witzer's insider compensation request be approved so that Mr. Witzer can continue to work hard to win cases for his clients which will generate the income necessary to fund a successful reorganization plan.

**II. PRAVATI'S LATE FILED OBJECTION SHOULD BE  
DISREGARDED BY THE COURT AND DEBTOR'S REQUEST FOR  
INSIDER COMPENSATION APPROVED**

On April 6, 2021, Debtor served the Notice of Insider Compensation for Brian D. Witzer to its secured, and 20 largest unsecured creditors. Creditor Pravati Credit Fund III LP objected to Mr. Witzer's Notice of Insider Compensation. On April 20, 2021, Debtor set the Insider Compensation for a hearing on May 11, 2021. The deadline for oppositions to the Compensation was due 14 days prior to May 11, 2021 hearing date. Pravati filed a late objection to Insider Compensation on May 6, 2021 [docket no.: 81]. Because of Pravati's late filed objection, Debtor did not have sufficient

1 time to do a more thorough research and reserves its right to supplement this Reply, if  
2 necessary.

3  
4 **III. CONCLUSION**

5 Based upon the foregoing, the Debtor respectfully requests that the Court overrule  
6 Pravati's late-filed objection and authorize the Insider Compensation for Brian D. Witzer.

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8  
9 Dated: 5/11/2021

LAW OFFICES OF MICHAEL JAY BERGER

10  
11 By: 

MICHAEL JAY BERGER

12 Counsel for Debtor and Debtor-in-  
13 Possession, Law Offices of Brian D. Witzer  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
9454 Wilshire Blvd., 6<sup>th</sup> Fl., Beverly Hills, CA 90212

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR LAW OFFICES OF BRIAN D. WITZER'S REPLY TO CREDITOR PRAVATI CREDIT FUND III, LP'S OBJECTION TO BRIAN D. WITZER'S NOTICE OF INSIDER COMPENSATION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 5/11/2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Counsel for Debtor: Michael Jay Berger michael.berger@bankruptcypower.com,  
yathida.nipha@bankruptcypower.com;michael.berger@ecf.inforuptcy.com  
Counsel for Citibank: Christopher D. Crowell ccrowell@hrhlaw.com  
U.S. Trustee: Dare Law dare.law@usdoj.gov  
Interested Party: Samuel Price sprice@pooleshaffery.com, mvalenti@pooleshaffery.com  
Counsel for Pravati Credit Fund: Cameron H Totten cameron@chorayoungllp.com, dionne@cym.law  
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On 5/11/2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

5/11/2021	Peter Garza	/s/Peter Garza
<u>Date</u>	<u>Printed Name</u>	<u>Signature</u>

**2. SERVED BY UNITED STATES MAIL**

**Secured Creditors:**

Pravati Credit Fund III, LLP  
c/o Chora Young & Manasserian LLP  
Attn: Joseph Chora, Esq.  
650 Sierra Madre Villa Ave. Ste 304  
Pasadena, CA 91107-2141

Pravati Credit Fund III, LLP  
c/o Fernald Law Group APC  
Attn: Brandon C. Fernald, Esq.  
15910 Ventura Blvd., #1702  
Encino, CA 91436

Pravati SPV II LLC  
Attn: Ian Abaie  
4400 N. Scottsdale Rd, Suite 9277  
Scottsdale, AZ 85251-3331

Amicus Capital Group, LLC  
28470 Avenue Stanford, Ste. 220  
Santa Clarita, CA 91355

Amicus Capital Group, LLC  
Poole Shaffery, Attorneys at Law  
Attn: Samuel R. Price, Esq.  
25350 Magic Mountain Parkway, 2<sup>nd</sup> Fl.  
Santa Clarita, CA 91355

U.S. Business Administration  
c/o Elan Levey, US Attorney's Office  
300 N. Los Angeles Street  
Fed. Bldg., Rm. 7516  
Los Angeles, CA 90012 (Address from Appendix D)

U.S. Small Business Admin  
El Paso Loan Service Center  
10737 Gateway West, Ste. 300  
El Paso, TX 79935

U.S. Small Business Administration  
Office of General Counsel  
Attn: Gil Hopenstand  
312 North Spring St., 5<sup>th</sup> Fl.,  
Los Angeles, CA 90012 (Address from POC)

United States Department of Justice  
Ben Franklin Station  
P.O. Box 683  
Washington, D.C. 20044 (Address from Appendix D)



**20 Largest Unsecured Creditors:**

Acosta & Associates LLC  
600 West Germantown Pike, Suite 600  
Plymouth Meeting, PA 19462

Alan G. Bassman, CPA  
Bassman, Adelman & Weiss, P.C.  
630 Sentry Parkway East, Ste 200  
Blue Bell, PA 19422

City of Los Angeles  
Office of Finance  
200 North Spring St., Rm 101  
Los Angeles, CA 90012

City of Los Angeles  
Office of Finance  
PO Box 53200  
Los Angeles, CA 90053

Citibank, N.A.  
Hemar, Rouso & Herald, LLP  
c/o Christopher D. Crowell  
15910 Ventura Blvd., 12<sup>th</sup> Floor  
Encino, CA 91436-2829

Citibank  
PO Box 6030  
Sioux Falls, SD 57117-6030

Franchise Tax Board  
Bankruptcy Section MS A340  
PO Box 2952  
Sacramento, CA 95812-2952 (Address from POC)

Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 7346  
Philadelphia, PA 19101-7346

Internal Revenue Services  
Attn: Insolvency  
24000 Avila Rd MS 5503  
Laguna Niguel, CA 92677-3405 (Address from POC)

Harold Wrobel - Fazoula  
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Mustang Funding LLC  
120 Broadway Avenue South  
Wayzata, MI 55391

The Solender Group  
2516 Via Tejon #277  
Palos Verdes Peninsula, CA 90274

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Shawn Amber Conrad Rougeron, Et, Al  
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4675 MaCarthur Ct., Ste. 550  
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1010 Thomas Edison Blvd., SW  
Cedar Rapids, IA 52404 (Address from POC)

**Interested Parties:**

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Long Beach, CA 90802

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Des Moines, IA 50368